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BEFORE THE ARIZONA POWER PLANT

AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY AND ITS ASSIGNEES IN CONFORMANCE WITH THE REQUIRMENTS OF ARIZONA REVISED STATUTES SECTIONS 40-360.03 AND 40-360.06 FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING CONSTRUCTION OF A 500 kV ALTERNATING CURRENT TRANSMISSION LINE AND RELATED FACILITIES IN MARICOPA AND LA PAZ COUNTIES IN ARIZONA ORIGINATING AT THE HARQUAHALA GENERATING STATION SWITCHYARD IN WESTERN MARICOPA COUNTY AND TERMINATING AT THE DEVERS SUBSTATION IN RIVERSIDE COUNTY, CALIFORNIA.	CASE NO. 130 DOCKET NO. L-00000A-06-0295-00130 **PROPOSED FINDINGS OF FACT, PROPOSED CONDITIONS TO THE CEC, AND CLOSING ARGUMENT OF THE STAFF OF THE ARIZONA CORPORATION COMMISSION**

The testimonial portion of hearings in the above captioned matter ("Case No. 130") concluded on October 31, 2006. However, Chairman Laurie A. Woodall ("Chairman Woodall") of the Arizona Power Plant and Transmission Line Siting Committee (the "Siting Committee") did not close the evidentiary record at that time.[1] A separate proceeding is currently pending in Docket Number E-200465A-06-0457 for an amendment of Decision No. 51170, or in the alternative, a declaration of no substantial change.[2] The outcome of the A.R.S. § 40-252 proceeding could affect the project proposed in Case No. 130.

In a pre-hearing procedural conference held on June 21, 2006, Chairman Woodall raised an issue regarding double circuit towers in Copper Bottom Pass. Specifically, she questioned whether towers were approved in either Line Siting Case No. 34 ("Case No. 34") or Line Siting Case No. 48 ("Case No. 48") for the Palo Verde to Devers 1 project ("PVD1"). The Applicant Southern

[1] Tr. Vol. XIV at p. 2892, ll. 6-14.

[2] *In the Matter of the Application of Southern California, pursuant to A.R.S. § 40-252, for an Amendment of ACC Decision N. 51170 or, in the Alternative, a Declaration of no Substantial Change*, Docket No. E-20465A-06-0457, filed July 10, 2006 (the "A.R.S. § 40-252 proceeding").

California Edison Company ("Applicant" or "SCE") proposes using the double circuit towers in Copper Bottom Pass for a portion of the route in the Palo Verde to Devers 2 project ("PVD2") at issue in Case No. 130.[3] The Staff of the Arizona Corporation Commission (the "Commission") ("Staff") believes that if the double circuit towers are found to be a substantial change, and are not subsequently approved, SCE may not use them for PVD2.

The Siting Committee issued a Certificate of Environmental Compatibility ("CEC") for PVD1 (Case No. 34) which was approved by the Commission in Decision No. 49226.[4] Two sections of the route approved in Case No. 34 were amended in Case No. 48 by the Siting Committee.[5] The Commission approved the amendment to the original CEC in Decision No. 51170. The ascending route through Copper Bottom Pass was approved in Case No. 34. This portion of the route was not addressed or changed in Case No. 48.

Staff asked Chairman Woodall to keep the record in Case No. 130 open until the close of the evidentiary record in the A.R.S. § 40-252 proceeding. Staff wanted an opportunity to move for administrative notice of the evidentiary record in the A.R.S. § 40-252 proceeding for inclusion in the record of Case No. 130. SCE agreed to have the evidentiary record in the A.R.S. § 40-252 proceeding be administratively noticed in Case No. 130.[6] Should it choose to do so, Staff also requests an opportunity to amend this filing to include additional argument based on the evidentiary record in the A.R.S. § 40-252 proceeding.

On October 10, 2006, Chairman Woodall issued an amended procedural order in Case No. 130. Chairman Woodall ordered counsel for the Applicant to meet and confer with all other parties

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[3] See A-27, Figure B-15; see also p. B-4 ("No new towers would be required through Copper Bottom Pass. When DPV1 was constructed through the pass it was installed on 13 four-legged double-circuit bundled-conductor lattice steel towers. The DPV2 500 kV transmission line would be located on these existing towers as a second circuit.").

[4] *In the Matter of the Application of Southern California Edison Company, in conformance with the requirements of Arizona Revised Statutes Section 40-360, et seq., for a Certificate of Environmental Compatibility for two segments of the Arizona Portion of one 500 kV transmission line between the Palo Verde Nuclear Generating Station (under construction) near Wintersburg, Arizona and the Devers Substation (existing) near Palm Springs, California*, Decision No. 49226, Line Siting Case No. 34, June 15, 1978.

[5] *In the Matter of the Application of Southern California Edison Company, in conformance with the requirements of Arizona Revised Statutes Section 40-360, et seq., for a Certificate of Environmental Compatibility for two segments of the Arizona Portion of one 500 kV transmission line between the Palo Verde Nuclear Generating Station (under construction) near Wintersburg, Arizona and the Devers Substation (existing) near Palm Springs, California*, Decision No. 51170, Line Siting Case No. 48, June 16, 1980.

[6] Tr. Vol. XIV at 2896, ll. 18-24.

no later than 4:00 p.m. on November 27, 2006. The purpose of the meet and confer was to prepare a mutually acceptable form of CEC. The meet and confer was held at the Commission's offices on November 17, 2006. The parties agreed to language for some conditions to be included in the CEC, and agreed to disagree on other conditions. The parties agreed to not discuss proposed findings of fact in the meet and confer. The parties intend to propose separate findings of fact based on their final recommendations for conditions to be included in the CEC.

In the October 10, 2006 amended procedural order, Chairman Woodall also ordered parties proposing alternative provisions for the CEC to file and electronically submit their proposals by November 27, 2006. She further ordered parties desiring to propose findings regarding need, and desiring to file written closing arguments to do so no later than November 27, 2006.

During the testimonial proceedings on October 4, 2006, Chairman Woodall requested parties proposing conditions to the CEC to propose additional findings of fact. She requested findings of fact related to the Federal Energy Policy Act of 2005 ("EPAct 2005")7. Chairman Woodall specifically requested such parties to propose the following findings: 1) whether or not proposed conditions either will or will not significantly reduce transmission congestion in interstate commerce; and 2) whether or not proposed conditions are not economically feasible.[8] Also on October 4, 2006, Staff requested an opportunity to submit a proposed finding of fact describing its position in this matter.[9]

Staff respectfully submits proposed findings of fact, proposed conditions, and closing argument in the above captioned matter. Finally, Staff requests the opportunity to also make an oral closing argument during the Committee's deliberations on January 8-9, 2007. Staff will begin with its closing legal argument. We will then present its proposed findings of fact, and conclude with its proposed conditions.

CLOSING ARGUMENT

Staff believes that the PVD2 project presents several issues of first impression for the Committee and the Commission. The issues of first impression include both legal and factual

[7] Pub. L. No. 109-58, 119 Stat. 594 (August 8, 2005).
[8] Tr. Vol. X at 2051, ll. 7-22.
[9] *Id.* 2048, l. 3, to 2049, l. 18.

considerations. Interstate transmission line siting is in the middle of a dramatic paradigm shift. The paradigm shift is the result of new federal legislation and industry changes on subregional and regional levels for the western electric transmission grid (the "Western Grid").

The new federal legislation is EPAct 2005, and is currently being implemented in part by federal agency rulemakings. EPAct 2005 creates the potential for overlap in State and federal siting processes.[10] It may take years for the overlap, and balance of authority between federal and state siting agencies, to be reasonably coordinated and implemented. Nevertheless, Staff believes that the Committee and the Commission "[need] to accommodate the western wholesale market needs while still preserving and protecting the Arizona consumers' interests" in this proceeding.[11]

On August 8, 2005, EPAct 2005 became effective, and increased the authority of federal agencies to site electric transmission facilities.[12] In particular, Section 1221 of EPAct 2005 created backstop authority for the Federal Energy Regulatory Commission ("FERC") to site interstate transmission facilities.[13] FERC will have discretion to use its backstop authority if State siting authorities fail to act or act in certain ways.[14] FERC may also invoke its backstop authority if State law does not provide for consideration of interstate benefits.[15] Under its backstop authority, FERC may issue permits for "*construction or modification* of electric transmission facilities in a *national interest electric transmission corridor* ["NIETC"] *designated by the Secretary* [of Energy]."[16]

Staff requests the Committee and the Commission to consider EPAct 2005 and the rules promulgated under it pursuant to A.R.S. § 40-360.06(A)(9). A.R.S. § 40-360.06(A)(9) provides that the Committee may consider:

> as a basis for its action with respect to the suitability of…transmission line siting plans….[a]ny additional factors *which*

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[10] See *Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities*, FERC Docket No. RM06-12-000, 117 FERC P 61202 at ¶ 19 (November 16, 2006) ("Order 689").
[11] Tr. Vol. XI at p. 2208, ll. 13-16 (testimony of Staff witness Mr. Jerry Smith).
[12] See Pub. L. No. 109-58, 119 Stat. 594 (August 8, 2005).
[13] *Id.* at Section 1221(b).
[14] *Id.* at Section 1221(b)(1)(C).
[15] *Id.* at Section 1221(b)(1)(A)(ii).
[16] *Id.* at Section 1221(b) (emphasis added).

> *require consideration* under applicable *federal* and state laws pertaining to any such site.[17]

Because EPAct 2005 *may*[18] provide backstop siting authority for PVD2, Staff believes it is both necessary and appropriate for the Committee to consider the federal law under A.R.S. § 40-360.06(A)(9).

In addition to emerging federal law, there are several factual considerations that make this proceeding a case of first impression. Staff provides an introduction to these factual considerations next. Following the introduction, Staff provides legal argument supporting its proposed findings of fact and proposed conditions using both State and federal law.

Most importantly, this proceeding is the first interstate transmission line siting in Arizona, and in the West, for a transmission line that could be subject to the FERC tariff of the California Independent System Operator ("CAISO").[19] As discussed in the section on need, CAISO control of the PVD2 project would have significant impacts on Arizona load serving entities ("LSEs") and ratepayers. Staff and the Commission have previously supported development of a different transmission planning organization that could become a regional transmission organization ("RTO")[20] for Arizona.[21] Arizona utilities have also supported development of WestConnect as a potential RTO for Arizona.[22]

WestConnect is that potential RTO[23], and its footprint includes all of Arizona.[24] Staff urges the Committee and the Commission to prevent the PVD2 project from expanding CAISO's

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[17] A.R.S. § 40-360.06(A)(9) (emphasis added).

[18] Staff briefs the applicability of FERC's backstop authority to PVD2 *infra*.

[19] Tr. Vol. XIII 2604, ll. 7-10. Note that CAISO's control area was created by merging the control areas of Pacific Gas & Electric Company, Southern California Edison Company, San Diego Gas & Electric,and the City of Pasadena. *Id.* 2601, l. 22, to 2602, l. 2.

[20] RTOs and Independent System Operators ("ISOs") provide similar functions.

[21] See e.g. the testimony of Staff witness Mr. Jerry Smith, Tr. Vol. X 2175, ll. 13-15 ("We're simply trying to preserve the integrity of opportunity for the WestConnect RTO once it forms….").

[22] See Tr. Vol. VII 1570, l. 3, to 1571, l. 15.

[23] WestConnect is in the process of developing a Virtual Control Area to test how members may merge their control areas. See Attachment A (http://www.westconnect.com/init_virturalcontrol.php).

[24] See Attachment B (http://www.westconnect.com/aboutwc.php). Also note that WestConnect's footprint is a subregional planning area. See Attachment C (http://westconnect.com/init_regionalplan.php). See also the testimony of Staff witness Mr. Jerry Smith, Tr. Vol. XI 2341, ll. 6-10 ("WestConnect is in the process of developing a tariff rate to be submitted to FERC that would accomplish the purpose of consolidating the transmission tariffs in the WestConnect footprint on an exploratory basis to see what degree it would work effectively for WestConnect.").

footprint into the footprint of a future WestConnect RTO. Arizona should determine its energy future instead of passively allowing SCE and CAISO to do so. Arizona's energy future should include choosing a RTO that best serves the needs of its LSEs and ratepayers.

Another factual consideration that is an issue of first impression in Arizona is whether double circuit towers may be used for two 500 kV lines. SCE proposes to use 13 double circuit towers located in Copper Bottom Pass and 1 double circuit tower located at the Palo Verde Hub.[25] The double circuit towers are currently being currently operated as single circuit towers for the PVD1 500 kV line. The use of double circuit towers for two 500 kV lines has never been approved in Arizona. The use of double circuit towers requires the PVD2 project to use a Special Protection Scheme ("SPS") to meet WECC reliability standards.[26]

A SPS is necessary to ensure reliability if "a common event result[s] in multiple lines being put out of service."[27] California siting authorities have routinely approved use of a SPS for co-locating multiple lines.[28] However, this Committee and this Commission have "not been supportive of use of special protection schemes for new installations."[29] Staff believes that there is sufficient legal authority for the Committee and the Commission to require reliability standards that exceed WECC standards.[30] Accordingly, Staff proposed conditions to maintain Arizona's reliability standards. Arizona's reliability standards are necessary to sufficiently protect Arizona ratepayers and the public interest.

A related reliability standard for two Extra High Voltage ("EHV") lines in a single

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[25] See A-1, Application for a CEC at Intr0-1 and at 2, section 4.2.1.2. See also *Amendment to southern California Edison Company's Application*, Docket No. E-20465A-06-0457. See also A-2, p. 19 of Tab 1.

[26] See e.g. Tr. Vol. XI 2238, ll. 4-13. See also S-30, supplemental document 9 at p 4 ("Staff understands the proposed SPS is required for a simultaneous outage of both the existing line and the proposed line between Palo Verde and Devers. Such an outage must be considered by WECC criteria as a credible outage because both lines are on common structures for a three mile section through Copper Bottom Pass as depicted in Figure 3.3.").

[27] Tr. Vol. XI 2230, ll. 17-21.

[28] *Id.* at 2238, ll. 22-24.

[29] *Id.*, ll. 12-19. See also S-29, supplemental document 9 at p. 4 ("In fact, the ACC has adopted a policy position in prior power plant and transmission line siting cases and via its Biennial Transmission Assessment ("BTA") process that an SPS should not be considered an acceptable technical option when proposing new electric infrastructure in Arizona.").

[30] Staff witness Mr. Jerry Smith testified that "in Arizona we have been raising the bar of expectations of our utilities to provide quality of service beyond the minimum requirement of WECC standards." Tr. Vol. XI 2301, l. 25, to 2302, l. 3.

corridor and terminating in common stations is the appropriate physical separation of the lines. If the Committee and the Commission site PVD2 in the same physical corridor as PVD1, a common event could result in both lines going out of service at the same time. Staff has consistently stated that it has "[reliability] concerns regarding the Palo Verde Hub and associated transmission system."[31] As in the past, Staff urges the Committee and Commission to ensure "[m]itigation of system risks associated with extreme Hub outage events."[32] Although separation issues have been raised in the past, there are no current reliability standards. However, "separation guidelines are [currently] being reinvestigated and reconsidered by WECC."[33]

The final factual consideration that is critical in this proceeding is the determination of need pursuant to A.R.S. § 40-360.07(B). The determination of need must balance Arizona's need for PVD2 with the need for the project on subregional and regional levels. SCE proposed PVD2 to meet the economic needs of California and CAISO ratepayers.[34] Under its FERC tariff, CAISO may approve a transmission line that promotes economic efficiency or system reliability.[35]

Although CAISO evaluates economic need, the California Public Utilities Commission ("CPUC") has authority to site transmission lines in California. The CPUC issued its final "Opinion on Methodology for Economic Assessment of Transmission Projects" on November 9, 2006.[36] Because the CPUC has not yet issued a Certificate of Public Convenience and Necessity ("CPCN") for PVD2, this new standard may be used for the project in California. Staff addresses this new standard in the section on need.

The Arizona standard set out in A.R.S. § 40-360.07(B) requires need to be determined "for an adequate, economical and reliable supply of electric power." Obviously PVD2 must meet

[31] S-30, supplemental document 10 at p. 3.
[32] *Id.*
[33] Tr. Vol. XI 2303, ll. 10-14.
[34] Tr. Vol. V 967, ll. 6-10.
[35] CAISO FERC Tariff, Third Replacement Volume No. 1, Original Sheet No. 317, Section 24.1 ("The ISO will determine that a transmission addition or upgrade is needed where it will promote economic efficiency or maintain System Reliability as set forth below.").
[36] *Order Instituting Investigation on the Commission's Own Motion into Methodology for Economic Assessment of Transmission Projects*, Investigation 05-06-041, Decision 06-11-018, CPUC (November 9, 2006) ("CPUC Methodology for Economic Assessment").

two different State standards in order to be permitted. Therefore, the determination of need for the project is unique for this Committee and Commission. Additionally, Staff believes that the facts regarding economic need demonstrate a need for California and CAISO ratepayers, but not for Arizona ratepayers.[37] Accordingly, Staff proposed conditions to ensure resource adequacy and reliability to offset the potential for net economic costs to Arizona ratepayers.

I. The Committee has authority to consider interstate benefits, and to consider need under the balancing test of A.R.S. § 40-360.07(B).

Staff believes that the Committee and the Commission may consider economic, resource adequacy, and reliability effects on Arizona ratepayers under both State and federal law. These factual considerations are necessary to determine need for a proposed project. State and federal law require a determination of need, and provide for the above factual considerations. This proceeding presents a unique challenge to both the Committee and the Commission. The factual record requires balancing need for Arizona ratepayers with need for California and CAISO ratepayers.

Staff urges the Committee and the Commission to carefully consider the public interests of Arizona ratepayers as required by Arizona law. However, Staff also urges the Committee and the Commission to consider the public interests of "reliable operation of the bulk-power system"[38] on subregional and regional levels. In addition to reliability, the Committee and the Commission should consider the efficient economic operation of the southwestern and western grids.

Arizona LSEs and generators operate not only in the Arizona market, but also in subregional and regional markets. Arizona benefits from participation in the larger markets. Therefore, the Committee and Commission should site projects that not only provide local benefits, but also provide subregional and regional benefits.

In this section, Staff provides legal argument about the Committee's authority under

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[37] Tr. Vol. XII 2407, l. 24, to 2408, l. 20 (testimony of Staff witness Mr. Matt Rowell).

[38] See Pub. L. No. 109-58, 119 Stat. 594 (August 8, 2005), Section 1211(a)(4) ("The term 'reliable operation' means the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.").

Arizona law to consider (1) economic, resource adequacy and reliability impacts on Arizona ratepayers; and (2) interstate benefits of the proposed project. In the next section, Staff provides legal argument on factual determinations necessary and appropriate under emerging federal law.

The statutory procedure for line siting in Arizona is a two-step process.[39] The Committee issues a CEC after considering the factors listed in A.R.S. § 40-360.06. The Commission then may approve or modify the Committee's decision. The Commission's decision must be based on the record developed by the Committee.[40] Although the Commission must consider the factors in A.R.S. § 40-360.06, it must also conduct a balancing test pursuant to A.R.S. § 40-360.07(B). The balancing test requires the Commission to "balance, in the broad public interest, *the need for an adequate, economical and reliable supply of electric power* with the desire to minimize the effect thereof on the environment and ecology of the state."[41]

A.R.S. § 40-360.07(B) requires the Committee to develop a record to enable the Commission to fulfill its statutory duties. Recent case law also permits the Committee to consider need and the balancing test in A.R.S. § 40-360.07(B), should it choose to do so. In *Grand Canyon Trust v. Arizona Corporation Commission*, 210 Ariz. 30, 107 P.3d 356 (App. 2005), the Court of Appeals of Arizona noted that:

> The factors the Siting Committee must consider in deciding whether to issue a CEC are set forth in A.R.S. § 40-360.06. ***These factors contain sufficient breadth to allow the Siting Committee to consider the need for power as a factor in considering a CEC application should it choose to do so.*** The statute also allows the Siting Committee to "impose reasonable conditions upon the issuance of a" CEC. A.R.S. § 40-360.06(A).[42]

Staff urges the Committee to consider need in this proceeding. Some of the parties disagree about the extent of environmental impact PVD2 may cause. However, any environmental impact would be contrary to the public interest if there is no need for the project. Therefore, Staff believes that it is generally appropriate and necessary for the Committee to

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[39] See A.R.S. § 40-360.07(A) ("No utility may construct a plant or transmission line within this state until it has received a certificate of environmental compatibility from the committee with respect to the proposed site, affirmed and approved by an order of the commission….").

[40] A.R.S. § 40-360.07(B).

[41] *Id.* (emphasis added).

[42] *Grand Canyon Trust*, 210 Ariz. at 35, 107 P.3d at 361, fn. 7 (emphasis added).

consider need.

In this case, it is essential. There is great disagreement on the three components of need identified in A.R.S. § 40-360.07(B). Moreover, Chairman Jeff Hatch-Miller and Commissioner Kris Mayes specifically requested findings of fact on need.[43] As Chairman Jeff Hatch-Miller pointed out "[u]nder ARS § 40-360.06 (A)(9), the Line Siting Committee can consider other additional factors it deems important in its deliberations."[44] Both *Grand Canyon Trust*, *supra*, and A.R.S. § 40-360.06(A)(9) provide sufficient authority for the Committee to consider need and to conduct the balancing described in A.R.S. § 40-360.07(B).

The above standard is relatively easily articulated. The difficult task before this Committee is how to apply the standard to complex and often contrary facts. Staff requests the Committee to apply the standard in determining whether to approve the project; and in determining reasonable conditions for a CEC if it approves the project. Staff believes that the factual record reflects great uncertainty for Arizona's public interest and ratepayers.

Because of the uncertainty, Staff urges the Committee to carefully consider the weight of the evidence for each of the three components of need described in A.R.S. § 40-360.07(B). Furthermore, Staff requests the Committee to weigh the evidence for the three components as a whole. For example, if the Committee determines that there is less compelling evidence for one of the components, it should require more compelling evidence for other components.

In the section on need, Staff argues that there is insufficient evidence for each of the three components to establish a need for this project. As a result, Staff cannot support the project as proposed. Staff proposed conditions that it believes will enhance the reliability of Arizona's transmission system.

If the Committee adopts Staff's proposed conditions, it still cannot support the project. The evidence on resource adequacy and economic benefits demonstrates that the project may

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[43] Committee Exhibit 1, See Commissioner Kris Mayes letter to the docket dated May 10, 2006 at p. 1, fn. 1 ("I am asking that the Line Siting Committee include in its recommendation to the Commission findings regardingthe need for this line in Arizona."); see also Chairman Jeff Hatch-Miller's letter to the docket dated May 10, 2006 at p. 2 ("....I request that the Line Siting Committee include testimony in the evidentiary record regarding the direct tangible benefits (i.e., reliability, operational or economic) that Arizona electric customers would enjoy if the DPV2 Project were constructed and operational.").
[44] *Id.*

have net costs to Arizona ratepayers. Because of the uncertainty and the direction of the evidence for these two components, Staff does not support the project. However, Staff will not oppose the project if its conditions are adopted and ensure reliability benefits for Arizona.

Staff's unusual position is based upon the reality that Arizona currently participates in, and needs to continue to participate in, subregional and regional markets. The evidence appears to support significant economic benefits for California and CAISO ratepayers.

In *Grand Canyon Trust, supra*, the Court of Appeals of Arizona held that the Commission may consider interstate need for power in determining need for a project.[45] The Committee and Commission have authority to consider the need of California and CAISO ratepayers and should do so. On the other hand, Staff does not believe such authority requires the Committee and Commission to ignore Arizona's public interest and ratepayers.

II. Even though it is unclear whether FERC has backstop authority over PVD2, the Committee should consider the legal standards under EPAct 2005 and FERC rulemakings.

Prior to EPAct 2005, "authority to site transmission lines and grant the power of eminent domain for the construction of new transmission facilities has been exercised by the states."[46] Section 1221(b) provides authority to FERC to accept jurisdiction for siting interstate transmission lines under certain conditions. The statutory authority appears to be discretionary.[47] On June 16, 2006, FERC issued a Notice of Proposed Rulemaking ("NOPR") to establish rules for implementing its authority under Section 1221.[48] FERC issued its final rule in Order 689 on November 16, 2006.

Also in accordance with EPAct 2005, FERC issued two other NOPRs. Although Order

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[45] *Grand Canyon Trust*, 210 Ariz. at 36-37, 107 P.3d at 3662-363.

[46] S-30, supplemental document 7, *Protocol Among the Members of the Western Governors Association, the U.S. Department of the Interior, the U.S. Department of Agriculture, the U.S. Department of Energy, and the Council on Environmental Quality Governing the Siting and Permitting of Interstate Electric Transmission Lines in the Western United States* (June 23, 2002) at p. 1, ¶ A.3.

[47] EPAct 2005, Section 1221(b) ("....the Commission *may*, after notice and an opportunity for hearing, issue one or more permits for construction or modification of electric transmission facilities in a national interest electric transmission corridor....") (emphasis added). See also Order 689 at p. 19, ¶ 31 (discussing the Commission's authority as discretionary).

[48] See FERC Docket No. RM06-12-000 at 71 FR 36258 (June 26, 2006); FERC Stats. & Regs. ¶ 32,605 (2006).

689 is the most relevant FERC decision for this Committee to consider, Staff urges the Committee to consider legal principles articulated in the other two NOPRs. Staff next discusses the legal standards in the latter two NOPRs, and then discusses FERC's backstop authority.

A. FERC legal standards for balancing stakeholder interests; and creating coordinated, open and transparent transmission planning on subregional and regional levels.

Staff does not believe that the legal standards cited in the NOPRs below are binding authority on the Committee or the Commission. Nevertheless, Staff requests the Committee and the Commission to consider the standards pursuant to A.R.S. § 40-360.06(A)(9).

1. The Committee and the Commission should balance all stakeholder interests, including both consumer and investor interests.

On July 20, 2006, FERC issued a final rulemaking in Docket No. RM06-4-000. The purpose of the rulemaking was to "promot[e] transmission investment through pricing reform."[49] FERC's decision in Docket No. RM06-4-000 is Order 679. Section 1241 of EPAct 2005 required FERC to conduct the rulemaking.[50]

In Order 679, FERC recognized that impacts on ratepayers must be considered for siting new transmission. In Paragraph 20, FERC held:

> The incentives adopted by this Final Rule are properly understood only in the context of the traditional regulatory principles they seek to further. The longstanding rule is that utility rate regulation must adequately balance both consumer and investor interests. ***It is not enough to ensure that investors are properly compensated, and it is not enough to ensure that consumers are protected against excessive rates. Our policies must ensure both outcomes and, in doing so, strike the appropriate balance between these twin objectives***. In striking that balance, the courts have recognized that there is no single formula for establishing a just and reasonable rate."[51]

FERC explained that it will follow traditional regulatory principles by balancing the interests of

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[49]FERC Docket No. RM06-4-000, *Promoting Transmission Investment through Pricing Reform*, 71FR 43294 (July 31, 2006), 116 FERC 61, 057 (2006) (July 20, 2006)

[50] See EPAct 2005, Section 1241(a) ("Not later than 1 year after the date of enactment of this section, the Commission shall establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities*for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.*") (emphasis added).

[51] A.R.S. Const. Art. 15 (emphasis added).

consumers and investors.

The traditional regulatory principles followed by FERC are similar to the principles followed by the Commission.[52] Moreover, the Commission has the same incentives as FERC to ensure adequate investment in transmission facilities in Arizona and throughout the Western Grid. The balancing test set out in A.R.S. § 40-360.07(B) is sufficiently broad for consideration of traditional balancing between the interests of consumers and investors.

In the proceeding before the Committee, evidence has been presented on both consumer and investor interests. Consumer interests include the interests of Arizona ratepayers, and California and CAISO ratepayers. Investor interests include the interests of SCE, and utility and merchant generators located at the Palo Verde Hub.

In the section on need, Staff discusses evidence that demonstrates a clear imbalance among the stakeholders in this case. California and CAISO ratepayers, SCE and Palo Verde Hub generators will be clear winners. For the project as proposed, Arizona ratepayers are likely to incur net economic costs without clear offsetting benefits. As a result, Staff proposes conditions necessary for protecting the public interests of Arizona ratepayers.

2. SCE did not adequately use a coordinated, open and transparent planning process.

On May 19, 2006, FERC issued another NOPR in Docket Nos. RM05-25-000 and RM05-17-000. This rulemaking is for "Preventing Undue Discrimination and Preference in Transmission Service" and was initiated because of changes in EPAct 2005. FERC is proposing to amend Order No. 888's pro forma Open Access Transmission Tariff, or OATT ("OATT NOPR"). FERC held at Paragraph 52:

> Specifically, Order No. 888 does not require sufficient coordination, openness, and transparency in transmission planning to ensure that new infrastructure is constructed to meet the needs of all eligible customers on a not unduly discriminatory basis. ***Without adequate coordination and open participation, market participants have minimal input or insight into whether a particular transmission plan treats all loads and generators comparably***. To ensure that truly comparable transmission service

[52] *Notice of Proposed Rulemaking re Preventing Undue Discrimination and Preference in Transmission Service Under RM05-25, et al.,* 18 CFR 35 & 37, 115 FERC 61,211 ¶ 52 (May 19, 2006)..

> is provided by all public utility transmission providers, ***including RTOs and ISOs, we propose to amend the pro forma OATT to require coordinated, open, and transparent transmission planning on both a sub-regional and regional level.***"[53]

Staff believes that neither the Applicant's planning process nor its evidence meets the standard to "treat ***all loads*** and generators comparably." For example, Staff does not believe that the Applicant sought "adequate coordination and open participation" of all market participants, especially those in Arizona.

Staff recognizes that an individual project may create some economic winners and some economic losers. Staff also recognizes that transmission projects should be viewed on a sub-regional and regional level. Therefore, one project may be balanced by another project or projects. The hope is that disparities between winners and losers will eventually be minimized, if not eliminated. In other words, all market participants should share equally in the benefits and costs of an integrated grid.

However, Staff does not believe dramatic differences should exist for an individual project like PVD2. If dramatic differences exist, the comparability standard discussed by FERC is not met. Furthermore, dramatic differences are completely unnecessary if an alternative project or projects can meet market needs without creating such differences.

Staff witness Mr. Jerry Smith testified about Staff's disappointments in the planning process used by SCE. Mr. Smith testified that he believes SCE's process appears inconsistent with the Interstate Transmission Line Siting Protocol of the Western Governor's Association ("WGA") ("WGA Siting Protocol").[54] The WGA Siting Protocol included four broad policy positions. The positions are consistent with Paragraph 52 of FERC's OATT NOPR and relevant to facts in the record.

The purpose of the WGA Siting Protocol is development of "a coordinated, interstate review of proposed interstate transmission facilities [to] enable identification and considerations

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[53] GET FULL CITE FOR THIS. (emphasis added).

[54] See S-30, supplemental document 7, , *Protocol Among the Members of the Western Governors Association, the U.S. Department of the Interior, the U.S. Department of Agriculture, the U.S. Department of Energy, and the Council on Environmental Quality Governing the Siting and Permitting of Interstate Electric Transmission Lines in the Western United States* (June 23, 2002).

of interstate needs, facilitate the construction of needed transmission, and ensure that the public interest is protected."[55] The Western Governors believe that its Protocol will expedite siting and construction of transmission lines "to better ensure adequate, affordable and reliable electricity supply to Western consumers."[56] Finally, the WGA stated that a coordinated joint review process must include "all affected governmental entities with authority for siting and permitting interstate transmission facilities."[57] The latter policy is necessary to preserve and protect local authority.[58]

Mr. Smith testified that the Protocol requires assembling a team of individuals from siting authorities in each state.[59] He stated that the purpose of the Protocol is to provide the same information at the same time to all state citing authorities for a project. A team of siting officials could timely assemble and distribute information to all involved states.[60] Mr. Smith opined that SCE did not meet the standards of the Protocol. He stated:

> In this case, we have not had that type of team form. We have not had the same witnesses, the same information provided in the CPUC or the Arizona proceedings. We're having different information provided. When we're talking about an interstate transmission project, this is viewed as something that's of value and interest in the region, not just to an individual state. And so I have to say I'm disappointed in how the proceedings are being scheduled whereby the Arizona siting process is wedged in the middle of a three-phase effort in California. The first two phases have concluded, the first being the initial consideration by the CPUC, followed by the environmental work, which is now concluded. And then once we have concluded our process, the CPUC will ultimately make the determination in California.[61]

The record has at least three different examples of the Committee and the Commission receiving information after other siting authorities received the same information. The first example arose on August 15, 2006. Staff discovered that SCE issued a request for

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[55] *Id.* at p. 2, Policy Position B.4.

[56] *Id.* at p. 2, Policy Position B.3.

[57] *Id.* at p. 2, Policy Position B.2.

[58] *Id.* at p. 3, Objective C.7.

[59] Tr. Vol. X at p. 2165, line 24 to p. 2166. See also S-30, supplemental document 7 at p. 3 (Implementation statement D.1.a.).

[60] Tr. Vol. X at p. 2166, ll.

[61] *Id.* at p. 2166, line 11 to p. 2167, line 3.

offers ("RFO") for 1,500 MW of new generation from an internet press release.[62] The RFO is important because it affects resource adequacy for both Arizona ratepayers and California ratepayers. It is also relevant for how PVD2 may be used by SCE.

The press release stated that "[o]n July 20, the California Public Utilities Commission approved a plant that allowed the costs of new generation contracts to be allocated to all customers within [SCE's] service territory."63 The RFO requires the generation to meet a delivery date of no later than August 1, 2010.64 Generation facilities at the Palo Verde Hub appear to meet the bid requirements.65 SCE witness Mr. Holmes testified that if generators at the Palo Verde Hub meet the bid requirements, "....they could apply for this RFO."66

The second example arose on October 3, 2006. Staff is on an email service list for SCE's application for a CPCN before the CPUC. On October 3, 2006, Staff received an email from the Administrative Law Judge ("ALJ") in the case. The email addressed testimony provided by SCE on July 10, 2006.

SCE witness Ms. Cabbell testified about the potential increase in capacity of PVD2 to accommodate the Desert Southwest Project.67 SCE was in ongoing negotiations with the sponsor of the Desert Southwest Project as of July 20, 2006.68 At that time, it was possible that the Desert Southwest Project could become a joint project with PVD269, increasing the capacity to 2340 megawatts ("MWs")70. SCE did not provide any information on the project to Staff until we raised the issue at hearing. The information is relevant to this proceeding because it could affect the capacity and costs of PVD2. SCE witness Ms. Cabbell further testified that construction could begin prior to WECC giving a new rating for PVD2.71

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62 See S-9.
63 *Id.*
64 S-19 at p. 3.
65 *Id.* at p. 9, Section B.11.3 and Exhibit B.11.3 (delivery points for transmission lines includes Devers-Palo Verde 500 kV Line).
66 Tr. Vol. VII 1505, l. 1, to 1507, l. 23.
67 See S-30, supplemental document 18, p. 452, ll. 9-24 and p. 453, line 24 to p. 454, line 19.
68 *Id.* at p. 452, ll. 9-19.
69 *Id.* at p. 455, ll. 13-25.
70 *Id.* at p. 453, line 24 to p. 454, line 19.
71 *Id.* at p. 454, line 26 to p. 455, line 12. Note that the rating is actually for Path 49 and not PVD2 individually.

The third example arose during Staff's investigation for the A.R.S. § 40-252 proceeding. In its application, SCE stated that the United States Department of the Interior, Bureau of Land Management ("BLM") required it to construct double circuit towers in Copper Bottom Pass in its ROW grant. SCE provided Exhibit A-10 to evidence the requirement. [72] The 1981 BLM ROW grant provides:

> Discussions were held between representatives of SCE and BLM District personnel concerning double-circuit towers through the Copper Bottom Pass area. It has been determined, based upon field examination of the terrain through this Pass, towers B-837 through B-849 require double-circuits.

However, BLM issued two ROW grants. The 1981 BLM ROW grant was the second grant, and only amended the two sections of the total route. BLM issued the first ROW on February 1, 1980 ("1980 BLM ROW").[73]

Section 18.e of the 1980 BLM ROW provided:

> Through Copper Bottom Pass and the Pass between Burnt Mountain and the Bighorn Mountains the Grantee will be required to either, (1) construct double-circuit towers upon granting of the right-of-way, or (2) agree to replace the single-circuit towers with double-circuit towers on the same alignment if a second major transmission line is needed.[74]

The 1980 BLM gave SCE the choice of building double circuit towers initially, or when a second single circuit system was constructed. The 1980 BLM ROW included the choice for double-circuit towers for Copper Bottom Pass *and* the pass between Burnt Mountain and the Bighorn Mountains. The 1981 BLM ROW did not address the latter pass.

SCE's proposal for PVD2 is to build a second single-circuit tower in the pass.[75] SCE witness Mr. Ahumada testified the Company contacted BLM about the condition.[76] He also testified that the Company will not seek a waiver of the condition in the first ROW grant.[77] Mr. Ahumada explained that an amendment to the PVD1 ROW was not necessary because it was not

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[72] See A-10 (BLM July 21, 1981 ROW record of decision) ("1981 BLM ROW").
[73] See S-33.
[74] *Id.* at p. 12.
[75] Tr. Vol. XIV 2878, ll. 3-15.
[76] *Id.* ll. 18-23.
[77] *Id.* 2879, l. 20, to 2880, l. 2.

required in the proposed amendment for the PVD2 ROW.[78]

Following the conclusion of the testimonial portion of this proceeding, Staff contacted both the Palm Springs Office and the Phoenix Office of the BLM to verify that a waiver was not needed. Initially, the Palm Springs Office informally told Staff that its personnel were unaware of the issue. Subsequently, the Palm Springs Office informed Staff that a waiver is necessary. On November 22, 2006, Staff formally requested BLM to provide a letter for Staff to file in this docket.[79] Staff would like the record to correctly reflect the status of SCE's right-of-way grant for the Burnt Mountain Pass.

B. FERC backstop authority.

Section 1221 of EPAct 2005 provides FERC with discretionary jurisdiction to issue construction permits under three sets of conditions.[80] FERC's jurisdiction is limited to siting of transmission facilities in designated NIETCs.[81] In Order 689, FERC stated that consideration of an application does not equal acceptance of jurisdiction.[82] FERC also stated that, if it exercises jurisdiction, it will consider State findings as it conducts its review.[83]

FERC did not specifically state when it will determine jurisdiction after the filing of an application. Instead, FERC affirms that an intervenor may raise the issue of jurisdiction, or timing of jurisdiction, in an application for intervention. It then states that "[t]he Commission will make a jurisdictional determination and address comments and protests *in a subsequent order issued on the merits* of the proposed project."[84] Apparently, FERC may delay making a jurisdictional determination until it considers the merits of an application. Obviously, if an application is filed, a State could spend significant resources defending its decision.

Some of the commenters in the rulemaking claimed that FERC "....should not have jurisdiction where a State denies siting approval for valid reasons under State law, such as the

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[78] *Id.* 2878, ll. 5-15.

[79] See Attachment No. ? (November 22, 2006 email). Staff had conversations with Mr. John Kalish, Project Manager for the BLM in the EIR/EIS environmental review process. Staff's request was made to Mr. Kalish.

[80] See Order 689 at p. 8, ¶ 14. See also *infra*.

[81] EPAct 2005, Section 1221(b).

[82] *Id.* at p. 19, ¶ 32.

[83] Order 689 at p. 63, ¶ 125.

[84] *Id.* at p. 19, ¶ 32 (emphasis added).

projection of environmental resources, the health and safety of its citizens, or if better alternatives are identified through the process."[85] FERC held that "....a reasonable interpretation of the language in the context of the legislation supports a finding that withholding approval *includes denial of an application.*"[86]

Commissioner Suedeen G. Kelly wrote a strong partial dissent. Commissioner Kelly argued that FERC's holding is preemption.[87] She pointed out that, if Congress intended to preempt State siting authority, "....surely, it would have said so in unmistakable terms."[88]

On the other hand, FERC held that:

> The Commission expects all potential applicants under [Federal Power Act] section 216 to act in good faith as it relates to State jurisdiction. Although the Commission may exercise jurisdiction in all instances where a State has withheld approval for more than one year, *the Commission, in determining whether to do so, will weigh heavily clear evidence that an applicant has abused the State process.*[89]

Thus, FERC could make a jurisdictional determination early in its review of an application depending on the evidence.

Below Staff discusses evidence in this proceeding that may raise FERC jurisdictional issues. Because FERC jurisdiction is uncertain, Staff requests the Committee and the Commission to make specific findings of fact related to the jurisdictional standards in EPAct 2005 and FERC rules.

In certain circumstances, FERC will have initial jurisdiction to issue a construction permit. Only one of those circumstances is relevant in this proceeding. Section 1221(b)(1)(A)(ii) requires a State to have authority to consider interstate benefits of proposed transmission facilities. As stated above, *Grand Canyon Trust*, *supra*, provides the Committee

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[85] *Id*, at p. 15, ¶ 25.

[86] *Id*, at p. 16, ¶ 26.

[87] *Id.* Commissioner Kelly's Partial Dissent at p. 3. *Cf.* EPAct 2005 at p. 391, Section 1221(g) ("STATE LAW.— Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.").

[88] *Id.* See also Attachment No. ? (WGA's Policy Resolution 05-30, dated November 8, 2005) at p. 2, Section B.1 ("However, the provisions for preemption of state transmission siting laws and designation of corridors on Federal lands also hold the potential for unproductive Federal interference in state and bcal land use decisions and undercutting State energy policies.").

[89] *Id.* at p. 13, ¶ 22 (emphasis added).

and the Commission with authority to consider interstate benefits. Thus, FERC would not exercise its jurisdiction over PVD2 based on a lack of authority to consider the project's interstate benefits.

FERC could exercise jurisdiction over PVD2 following Arizona's siting process. The threshold issue is whether PVD2 is in a NIETC. If PVD2 is in a NIETC, then the jurisdictional standard in Section 1221(b)(1)(C) would apply.

In Paragraph 11 of Order 689, FERC stated that the Department of Energy ("DOE") issued its National Electric Transmission Congestion Study ("Congestion Study") on August 8, 2006.[90] Section 1221(a) required the Congestion Study to be completed one year following the effective date of EPAct 2005. Section 368(a) of EPAct 2005 also requires designation of NIETCs for the 11 Western States no later than two years after August 8, 2005.[91]

As part of the process for designating NIETCs, DOE is working with the U.S. Departments of Interior, Agriculture and Defense ("PEIS Agencies") to prepare a programmatic environmental impact statement ("PEIS"). The PEIS Agencies will use the PEIS to designate the NIETCs in 11 Western States.

A draft PEIS was issued on June 9, 2006.92 The final PEIS and designation of NIETCs will be issued in August, 2007.[93]

During FERC's rulemaking, several entities, including the WGA, requested FERC to delay its rulemaking until the PEIS Agencies designated NIETCs.[94] FERC declined to delay its rulemaking and held, "While *the Commission has no authority to issue a permit unless a facility is in a National Corridor*, this does not affect the Commission's ability to put in place the filing requirements that will apply once National Corridors are designated."[95] FERC also declined to "....define what constitutes a National Corridor and whether the designation is a permanent

[90] Order 689 at p. 6, ¶ 11.
[91] EPAct 2005, Section 368(a).
[92] See attachment No. ?.
[93] See S-7.
[94] Order 689 at p. 6, ¶ 12.
[95] *Id.* (emphasis added).

one."[96] FERC explained:

> The Commission declines to make such rulings. DOE, not the Commission, is responsible for designating and defining the National Corridors under EPAct 2005. Thus, it would be inappropriate for the Commission to establish an independent definition in the Final Rule or opine on whether a corridor designation is a permanent one.[97]

The Congestion Study found the path from Arizona[98] to the WECC transmission path 26 ("SP26") to be a "critical congestion area."[99] The Congestion Study only designated the east-to-west direction as congested. It also cited a California Energy Commission strategic plan. The plan found that PVD2 was "needed in the near term."[100] Figure 5.3 identified four major tie lines from EOR to SP26, including PVD1.[101] Based on the information cited in the Congestion Study, one could argue that the NIETC will be all of Path 49.

However, the draft PEIS identified a corridor from Phoenix to California that follows Interstate 10 ("I-10").[102] Furthermore, BLM districts in Arizona have begun incorporating the I-10 corridor in their resource management plans.[103] Based on this information, one could argue that the NIETC will be the I-10 corridor.

Therefore, it is uncertain whether PVD2 is in a NIETC. If PVD2 is in a NIETC, FERC could exercise jurisdiction if the Committee and the Commission withholds approval or conditions the CEC contrary to the standard in Section 1221(b)(1)(C)(ii).

If the Committee and the Commission do not approve the CEC, FERC would likely find that Arizona withheld approval. Section 1221(b)(1)(C)(i) provides that FERC has jurisdiction if:

> The State commission or entity with siting authority withholds approval of the facilities for more than one year after an application is filed or one year after the designation of the relevant national interest electric transmission corridor, whichever is later....

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[96] *Id.* at p. 7, ¶ 13.
[97] *Id.*
[98] WECC refers to the Arizona side of the transmission grid as Path 49 or East-of-River ("EOR"). U.S. Dept. of Energy, Nat'l Transmission Congestion Study, Section 5.3, pp. 44-47 (August 2006).
[99] U.S. Department of Energy, *National Electric Transmission Congestion Study* (August, 2006) at p. 45.
[100] *Id.*
[101] *Id.* at p. 46.
[102] S-7.
[103] See S-3, S-4, S-5, S-6 and S-8.

As stated above, FERC equates "withholds approval" to "denial." Thus, if the Committee and the Commission deny approval for a CEC, FERC could exercise jurisdiction. Of course, FERC's exercise of jurisdiction based on denial could be challenged.

In its rulemaking, FERC was asked to "address the Commission's jurisdiction over facilities that span multiple States where one State may have approved the facilities and another does not."[104] FERC held that it "would have to review the operation of the facility as a whole."[105] Therefore, if either the CPUC or this Committee and Commission deny approval, FERC could exercise jurisdiction.

If the Committee and Commission condition approval of the CEC, FERC would likely review the merits of the conditions prior to exercising jurisdiction. This scenario is probably the basis of the language in Paragraph 32 of Order 689. Section 1221(b)(1)(C)(ii) provides that:

> ....the State *conditions* the construction or modification of the facilities in such a manner that the proposal *will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.*[106]

In Order 689, FERC declined to provide more specific standards for the two criteria in Section 1221(b)(1)(C)(ii).[107] FERC said that it would apply the criteria on a case-by-case basis.[108]

FERC's decision did not resolve an apparent inconsistency in terms. The jurisdictional standard is different than the review standard in Section 1221(b)(4). Section 1221(b)(4) uses "protects or benefits consumers" rather than "economically feasible." The Committee and the Commission should review the record in this proceeding using both terms.

Another review standard the Committee and the Commission should consider is Section 1221(b)(6). Section 1221(b)(6) requires that "the proposed modification will maximize, *to the extent reasonable and economical*, the transmission capabilities of existing towers or structures."[109] This section obviously could be applied to the double circuit towers in Copper

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[104] Order 689 at p. 20, ¶ 35.
[105] *Id.*
[106] EPAct 2005, Section 1221(b)(1)(C)(ii) (emphasis added).
[107] Order 689 at p. 20, ¶ 34.
[108] *Id.*
[109] EPAct 2005, Section 1221(b)(6) (emphasis added).

Bottom Pass.

One of the commenters in the rulemaking asked FERC "....to be mindful that a policy of maximum use of existing towers and structures should be conditioned upon maintaining or improving the reliability of the transmission system."[110] Although FERC declined to adopt a bright-line test[111], Staff believes the "to the extent reasonable" standard is not satisfied for PVD2. Staff argues below that use of double circuit towers will reduce reliability.

Finally, another finding in Order 689 is relevant to this proceeding. In Paragraph 44, FERC held that "the determinations of an independent entity, such as an RTO, should be given due weight in our assessment of whether a particular facility is needed to protect or benefit customers." CAISO provided testimony in this proceeding. Thus, if FERC exercises jurisdiction over PVD2, it will give "due weight" to that testimony.

III. The need for PVD2 is less compelling for Arizona ratepayers than for California and CAISO ratepayers.

As discussed above, Arizona law does not provide for a CEC based on an individual need factor. A.R.S. § 360.07(B) specifically requires "the need for an adequate, economical *and* reliable supply of electric power."[112] Arizona's siting statute is in direct contrast with the CAISO tariff. CAISO's tariff allows projects based only on economic efficiency, and projects based only on reliability.[113] All three need factors must be considered in Arizona.[114] Moreover, SCE has proposed PVD2 "as a project....identified to lower production costs within California, *it's a project based on economics*."[115]

Of course, the conflicting standards could be an issue for FERC backstop authority. Hopefully, if FERC exercises jurisdiction, the due weight it gives to CAISO testimony will

[110] Order 689 at p. 23, ¶ 40.
[111] *Id.* at ¶ 41.
[112] A.R.S. § 40-360.07(B) (emphasis added).
[113] See S-12 at CAISO FERC Electric Tariff, Original Sheet No. 317, Section 24.1, Determination of Need (Effective March 1, 2006) ("A Participating TO or any other Market Participant may propose a transmission system addition or upgrade. The ISO will determine that a transmission addition or upgrade is needed where it will promote economic efficiency ***or*** maintain System Reliability....") (emphasis added).
[114] But note that CAISO could consider both.
[115] Tr. Vol. VI s1354, ll. 1-5 (emphasis added).

recognize the differences. The Committee and the Commission does not need to consider the different standards in deliberations for PVD2. Staff believes that all three Arizona factors must be considered as a whole to satisfy "the broad public interest."[116] If one factor is less compelling, then one or both of the other factors must be more compelling to justify siting PVD2. Below, Staff addresses each need factor separately.

A. The need for resource adequacy in Arizona and California.

The evidence in the record does not demonstrate PVD2 is needed for resource adequacy for either California ratepayers or Arizona ratepayers. Staff addresses evidence on resource adequacy for California ratepayers first, and for Arizona ratepayers second.

1. Resource Adequacy for California ratepayers.

California currently has no requirement for resource adequacy under the CAISO tariff. CAISO witness Ms. Le Vine testified that:

> When the deregulation of electric utility industries happened back in 1998, what ended up happening was that there was no responsibility to serve load. Today most utilities outside of California have a specific requirement from their utilities' commission, or in this case I would assume it is the ACC, where APS, as an example, is required to serve the load that APS has in its service territory. When we deregulated in California, that requirement went away.[117]

Ms. Le Vine testified that the CAISO reversed in part the steps California took to deregulate its electric utility industry. CAISO initially took two steps to ensure that requirements to serve load are in place.[118] CAISO first required "reliability must-run to take care of the generating unit that is in a certain load pocket so it doesn't exhibit market power."[119] Ms. LeVine further testified that:

> Then with the advent of the energy crisis, we did put in place, consistent with a FERC order, must offer waiver denials. So in other words, generators in California have to go ahead and offer to the California ISO their generation first before they can go ahead and sell it someplace else. The *whole must offer waiver process is now being replaced with the resource adequacy process* that I will

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[116] *Id.*

[117] Tr. Vol. XIII 2508, ll. 2-10.

[118] *Id.* at ll. 12-25.

[119] *Id.*

get into in a little bit.[120]

Resource adequacy will be required with CAISO's Market Redesign and Technology Upgrade ("MRTU") tariff.[121] Ms. Le Vine stated that the MRTU is "a design that is set to solve some of the problems that came up during the energy crisis back in 2000, 2001."[122] Ms. Le Vine explained that the MRTU will put in a mechanism to assure resource adequacy for California ratepayers. The MRTU requires load serving entities ("LSEs") such as SCE to demonstrate it has sufficient generation to meet its load.

As stated above, Staff discovered that SCE issued an RFO for 1500 MWs that could include generators at the Palo Verde Hub. The RFO also provides for contracts up to 10 years.[123] The RFO appears to be part of an effort by SCE to meet its resource adequacy obligations under the MRTU. The MRTU will become effective November 1, 2007.[124] The RFO includes the possibility of expedited delivery by August 1, 2007. It requires all generation to be on line no later than August 1, 2010.[125] Note that SCE expects to complete construction of PVD2 by 2009.[126] Ms. Cabbell also testified that it is possible that SCE would contract with merchant generators at the Palo Verde Hub.[127]

Ms. Le Vine testified that determination of resource adequacy will be a cooperative process among CAISO, the CPUC and the California Energy Commission.[128] She also explained that:

> Only generators within the CAISO control area can be considered participating generators. So presuming that the generator that your in reference to is within the CAISO control area, the actual resource adequacy agreement is between that generator and the load-serving entity. It is not with the ISO. What ends up happening is *the load-serving entity has a requirement to show us that they have sufficient capacity that they have contracted with to*

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[120] *Id.* 2508, l.23, to 2506, l. 5.
[121] S-21 at p. 2.
[122] *Id.* at 2501, ll. 17-22.
[123] S-9.
[124] S-21 at p. 2.
[125] S-19 at p. 3 of 18.
[126] A-2, Slide 20.
[127] Tr. Vol. IV 929, ll. 4-14.
[128] Tr. Vol. XIII 2627, ll. 14-23.

meet the resource adequacy requirement.[129]

Obviously, PVD2 could be used to meet SCE's resource adequacy requirements through the RFO. SCE witness Mr. Holmes even testified as follows:

> Q. And the question was whether this RFO seeking the 1,500 megawatts was taken into consideration when they did the emissions analysis in the draft EIR.
>
> A. Yes. When we developed our production studies, we have to balance load growth with generation projects. And so we did that, and the new generation that we assumed that would be built within our production simulations would capture the RFO, the new generation RFO, Staff Exhibit 9....[130]

SCE provided other evidence that appears inconsistent with the above possibility. For example, Mr. Pfiefenberger testified that SCE would use PVD2 as follows:

> During the peak hours of July and August, the increase in Arizona generation is only between 30 and 50 megawatts. It is 50 megawatts if you take the average of, you know, noon to early evening hours over the two-month period. It is more like 30 megawatts if you actually look at the peak load day in each of those years....Over the course of the year, the average is about 230 megawatts. So because of DPV2, the average increase in Arizona generation over the entire course of the year is about 230 megawatts.[131]

The projected use of PVD2 is inconsistent with a determination that SCE *needs* the project to meet its resource adequacy requirement.

There is more evidence that appears inconsistent with the RFO. SCE's Plan of Service includes use of SPS, which would drop 2,000 MWs of load in its service territory for emergency contingencies.[132] If resource adequacy was a significant factor, why would SCE design a project for 1,200 MWs, and need to drop 2,000 MWs in a contingency? Isn't resource adequacy most important during a contingency? Hopefully, the California market crisis in 2000 and 2001 answered that question.

Because the evidence is contradictory, it is difficult to predict how SCE will use

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[129] *Id.* at p. 2639, line 20 to p. 2640, line 5.

[130] Tr. Vol. VI 1355, l. 20, to 1356, l. 3.

[131] Tr. Vol. V 1150, ll. 6-20.

[132] Tr. Vol. XIV 2840, ll. 6-12 (SCE witness Ms. Cabbell testified that the "SPS would drop 2,000 megawatts or up to 2,000 megawatts of load in Edison's system."). See also Tr. IV 873, l. 18, to 875, l. 1 (The SPS is for a double contingency for the simultaneous outage of PVD1 and PVD2 resulting in a loss of 3,000 MWs. The remaining 1,000 MWs would come from spinning reserves.).

PVD2. Moreover, as discussed below, SCE is not claiming that PVD2 is *needed* for it to meet its resource adequacy requirement.[133] Accordingly, Staff respectfully requests the Committee and the Commission to issue a finding of fact. The finding of fact should clearly state that PVD2 is not proposed or needed to meet the resource adequacy needs of California ratepayers.

2. Resource Adequacy for Arizona ratepayers.

Even if resource adequacy could be demonstrated for California ratepayers, an individual transmission project should not trade resource adequacy for one load center at the expense of resource adequacy in another. Resource adequacy also should not be considered independently from traditional concepts of transmission planning. Evidence in the record clearly supports a finding of fact: PVD2 is not needed to meet the resource adequacy requirements of Arizona ratepayers.

Traditional concepts of transmission planning should be recognized and used to evaluate PVD2. SCE is proposing to construct a 500 kV transmission line to access and transport generation 278 miles to its load.[134] This project is not about resource diversity. The available generation at the Palo Verde Hub is approximately 5,000 MWs of gas-fired generation.[135] Staff witness Mr. Robert Gray testified that PVD2 will likely use gas-fired generation at the Palo Verde Hub to replace older gas-fired generation in California.[136] SCE acknowledged the displacement in its application:

> [CAISO] forecasts that emissions from power plants would increase in Arizona and decrease in California with implementation of the Proposed Project (CAISO, 2005). This forecast is based on the dispatch of more modern and efficient facilities in Arizona displacing older and less efficient generating source[s] in California. The CAISO forecasts that with DPV2, power plant NO_x emissions in Arizona would increase by 200

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[133] Tr. Vol. VI 1355, l. 23, 1356, l. 8. *Cf.* A-27 at A-11 ("The DPV2 Project would also provide access to additional capacity that can serve to meet the State's resource adequacy requirements and lower transmission system power losses.").

[134] A-27 at p. A-4, Section A.1.2. (230 miles from Harquahala Generating Substation to the Devers Substation, and 48.2 miles west of the Devers Substation).

[135] See Tr. Vol. IV 910, l. 17, to 911, l. 15 (2004 Statement to CAISO about 6,500 MWs of available merchant generation at the Palo Verde Hub may not include 1,500 MW of generation from Red Hawk. Red Hawk is not an APS owned facility. GET CITATION FOR THIS.). The available merchant generation at the Palo Verde Hub is gas-fired. See Tr. Vol. X 2089, l. 18, to 2091, l. 4.

[136] Tr. Vol. X 2094, l. 18, to 2099, l. 11.

tons/year, and NO_x emissions in California would decrease by 590 tons/year, for a net decrease of 390 tons/year.[137]

Why replace local generation using the same fuel type 278 miles from the load pocket? Although planning the location of generation can be complicated, the rule of thumb is to place it as close as possible to the load. Committee witness Mr. Kondziolka "….I do like [the] thought about more local generation…."[138] Mr. Kondziolka explained:

> So it's a very – what I consider complex way of looking at it, but it's not just where you put the generation. It's also the type of generation that you install and the way you interconnect the generation into the transmission system, that would affect the overall results….simply adding generation would not necessarily change the answer, because it does include the characteristics of the generation as well….Some generation [needs to come on line in] just 30 minutes.[139]

Natural gas-fired generation has the same operating characteristics in California that it does in Arizona. Displacement of generation with similar characteristics is insufficient justification for a 278-mile 500 kV transmission line.

CAISO also testified about the benefit of local generation. Ms. Le Vine described problems with a generation poor load pocket on the San Francisco peninsula. She stated that transmission lines were an inefficient solution to serving the load. In particular, she stated:

> To the extent that one of our problem areas actually is the San Francisco peninsula, up on the peninsula there is a high density of load demand. A lot of people live there. It is very concentrated. But there are very few – there is only, actually, one generator left at the moment on the peninsula….The problem we have in San Francisco is there is [sic] a couple transmission lines in and one generator sitting there. So in order for the generation actually to serve the houses and the load in that area, it is becoming more and more of an issue…."[140]

Evidence in the record also demonstrates that PVD2 could cause resource adequacy problems for Arizona ratepayers. Several witnesses testified that Arizona load would "grow" into the excess generation at the Palo Verde Hub shortly after PVD2 would go into service. The Residential Utility Consumer Office ("RUCO) witness Mr. Ahearn testified:

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[137] A-27 at p. D.11-27, Section D.11.4.

[138] Tr. Vol. VII 1666, ll. 6-21.

[139] *Id.* at p. 1659, line 3 to p. 1666, line 21 (Gas-fired generation is on the margin because of its quick ramp up time. GET CITE FOR THIS).

[140] Tr. Vol. XIII 2544, l. 21 to 2545, l. 24.

> Let's take these utility executives at their word, that in the 2011, between now and the 2011 time frame, Arizona would have absorbed this excess capacity and after 2011 is going to need to build additional capacity.[141]

Staff witness Mr. Gray agreed that Arizona utilities could grow into the excess capacity by about 2010.[142] Staff witness Mr. Matt Rowell confirmed Mr. Gray's testimony:

> And it is Staff's opinion that, you know, the analysis we have done indicates there is really no fundamental need for the project in Arizona. Arizona is faced with the prospect of tremendous load growth. We have utilities that need to serve that growing load. And we don't see the PVD2 project really helping that at all. The real purpose of the line is to move energy out of Arizona into California.[143]

SCE claims that PVD2 will improve Arizona's access to renewable energy resources. But the evidence it provides is contradictory and speculative. SCE witness Mr. Pfeifenberger testified:

> Improved access to renewable resources. There are two components to that. One is DPV2 itself directly improves access of Arizona utilities to renewable resources that are being developed and can be developed in California....And transmission projects that I think are facilitated by DPV2, such as TransWest Express and the Project Zia....are needed to provide access of Arizona utilities to low cost renewable resources."[144]

However, other witnesses did not completely agree with him, and Mr. Pfeifenberger clarified some of the possibilities on cross-examination.

Mr. Pfeifenberger admitted that Arizona has access to renewable resources in California without PVD2. The path is constrained from east to west, but not west to east.[145] RUCO witness Mr. Ahearn testified that California renewable resources will be necessary to meet the portfolio standards in California. Therefore, they would not likely be available for Arizona ratepayers.[146]

Committee witnesses Mr. Kondziolka and Mr. Smith both testified that TransWest and Project Zia are not dependent upon PVD2. They did state, however, that PVD2 and the

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141 Tr. Vol. VIII 1782, ll. 8-12.

142 Tr. Vol. X 2106, l. 23, to 2107, l. 14.

143 Tr. Vol. XII 2408, ll. 5-13.

144 Tr. Vol. V 1132, l. 21, to 1133, l. 19.

145 Tr. Vol. VI 1204, ll. 2-17.

146 Tr. Vol. VIII 1792: 19-25.

developmental projects are complementary.[147] Does PVD2 increase resource adequacy in Arizona because of independent projects that are merely complementary? Such a finding would not be reasonable.

B. The need for economical supplies of electric power in Arizona and California.

SCE is proposing PVD2 as a project that will reduce costs of generation for California. SCE is ***not*** proposing PVD2 as a project to reduce costs of generation in Arizona. SCE clearly articulated the goal of the project in its Application:

> [T]he DPV2 project is primarily driven by the need to provide additional high-voltage electrical transmission infrastructure to enhance competition among energy suppliers, and *increase reliability of supply*[[148]], *which will enable California utilities to reduce energy costs to customers by about $1.1 billion over the life of the project*. Specifically, DPV2 will increase transmission capacity by 1,200 megawatts (MW), *allowing California access to cost-effective energy in the southwestern United States, and thereby displacing higher-cost generation in California.*[149]

Below, Staff first discusses the need for economical supplies of electric power in California, and then we discuss the need in Arizona.

1. The need for economical supplies of electric power in California.

No party disputes that PVD2 is economically beneficial for California ratepayers. CAISO ratepayers will incur $650 million of costs in 2005 dollars[150,] and California ratepayers will receive a savings of about $1.1 billion.[151] The critical question for the Committee and the Commission is whether these economic benefits satisfy the standard for need required by A.R.S. § 40-360.07(B). As the project is proposed by SCE, the evidence in the record requires an unequivocal no.

The need for economical supplies of power in California does not offset the potential effects on Arizona ratepayers. As discussed above, PVD2 could harm resource adequacy in Arizona. As discussed next, PVD2 could result in net increases in rates for Arizona ratepayers.

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[147] Tr. Vol. X 2016, l. 21, to 2017, l. 24.

[148] Note that reliability of supply is not the same thing as reliability of the EHV transmission system.

[149] A-27 at p. A-7, Section A.2 Purpose and Need for the Proposed Project.

[150] A-27 at A-15 ("The 2005 present value revenue requirements for DPV2 is estimated at $650 million.").

[151] See also A-27 at A-14 ("SCE determined that the lifecycle benefits of DPV2 are greater than the lifecycle costs of constructing and operating DPV2.").

Therefore, Staff proposes reliability conditions to offset lack of need for resource adequacy, and the lack of need for lower cost generation in Arizona.

Before moving on to Arizona needs, it is important to discuss why generation may be less expensive to locate in Arizona compared to California. Moreover, the benefits to locate generation in Arizona are not just for current needs, but are also projected for future needs. In its Application, SCE states that a benefit of PVD2 is to access "areas where generation has been more easily sited and constructed."[152] In its Congestion Study, DOE also recognized:

> Given local opposition to new power plants and the limited new plant construction over the past decade, it is questionable whether enough new generation will be built within the region soon enough to meet reliability requirements. Thus, imports are likely to be needed to ensure adequate capacity resources for area reliability. Imports also provide economic benefits: access to lower-cost generation....and efficient gas-fired units could reduce and stabilize the cost of supplying electricity to [California] consumers.[153]

Additionally, the California Energy Commission currently does not project any significant capacity additions in California from 2007 through 2010.[154]

The evidence suggests that the economic benefits of PVD2 to California ratepayers are primarily less stringent siting and permitting in Arizona. This economic justification does not meet the need standards of A.R.S. § 40-360.07(B). Staff also believes that arbitraging varying State laws should not be sufficient to satisfy standards in EPAct 2005. It should be considered market manipulation, rather then creating economic efficiency of the bulk-power system. The issue is not adequately addressed in EPAct 2005 or FERC's rulemakings. Thus, it is uncertain how the new federal law will apply to such projects.

2. The need for economical supplies of electric power in Arizona.

SCE and Staff present economic studies to determine the economic costs and benefits of PVD2 to Arizona ratepayers. Staff witness Mr. Rowell testified that current economic models

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[152] A-27 at A-7.

[153] Congestion Study at p. 46.

[154] See S-17 and S-18 (California Energy Commission, Final Staff Report, Summer 2006 Electricity Supply and Demand Outlook (June 29, 2006 Revised Demand).

are insufficient to accurately predict precise numbers for benefits and costs.[155] He recommended that the Committee and Commission focus more on the direction of benefits and costs.156 Mr. Rowell testified that Staff witness Mr. Rajat Deb created a model based on the Western Grid. He drew a general conclusion based on the model that there is an economic benefit for the Western Grid, but an economic detriment for Arizona.[157]

Nevertheless, Mr. Rowell presented the numeric output of the modeling. Mr. Deb's model predicted a net economic costs to Arizona ratepayers of approximately $242 million.[158] But Mr. Rowell explained that Arizona relies less heavily on spot, wholesale markets for generation than California.[159] Arizona utilities include a significant portion of their generation in their cost-of-service because they own generation.

Therefore, Arizona ratepayers would pay rates that rely less on spot prices than California ratepayers.[160] However, Mr. Rowell testified that Arizona's electric utility industry could change in the future and be more reliant on spot prices.[161] Mr. Deb's analysis showed that the spot prices at the Palo Verde Hub would increase by $2.90 per megawatt hour ("MWh") in 2010.[162] This increase is approximately 5%.[163]

In contrast to Staff's analysis, SCE claims that PVD2 provides net economic benefits to Arizona ratepayers. SCE witness Mr. Pfeifenberger presented an analysis that layered on suggested benefits to the production cost modeling performed by SCE. In Slide 58a, Mr. Pfeifenberger presented his analysis.164 He quantified benefits for Arizona that fall outside production modeling, but did not quantify similar costs. The alleged benefits included items such as renewable resource access, improved investment climate, and liquidity benefits. Mr.

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155 Tr. Vol. XII 2466, l. 5, to 2468, l. 13. See also *Id.* 2394, l. 24.
156 *Id.*
157 *Id.* at p. 2469, line 19 to p. 2470, line 7.
158 S-25 at p. 9.
159 *Id.* at p. 2397, line 4 to p. 2398, line 11.
160 *Id.* (In other words, rates for Arizona ratepayers would increase, but probably by less than $242 million).
161 *Id.* at p. 2404, line 6 to p. 2405, line 3.
162 S-25 at p. 10.
163 Tr. Vol. VII at p. 2413, ll. 6-23.
164 See A-14, Slide 58a.

Pfeinberger claims that these benefits result in net economic benefits to Arizona ratepayers in the amount of $213 million.165

Staff witness Mr. Rowell testified that the claimed benefits were highly speculative and not subject to accepted methods of quantification.166 RUCO witness Mr. Ahearn also questioned the claimed benefits of access to California renewable resources (approximately $130 million for lifecycle and $48 million from 2009-2015.).167

The CPUC Methodology for Economic Assessment ("CPUC Order") also addressed deficiencies in the CAISO economic assessment. The CPUC stated that "As the DPV2 analyses demonstrate, benefit projects can vary widely based on relatively minor variations in key parameters and modeling conventions."168 The CPUC held in its Order that it would not provide a rebuttable presumption for CAISO's economic methodology, i.e. the TEAM approach.169 The CPUC Order provided 6 general guidelines. Two are especially relevant to PVD2: (1) "The perspective of CAISO ratepayers is of primary importance in CPCN proceeding, although there is value in reviewing benefit-cost results from other perspectives as well"; and (2) "In addition to energy benefits, other economic effects of a transmission project may be considered, including economic effects that may not be quantifiable."170

Staff urges the Committee and the Commission to likewise consider the perspective of Arizona ratepayers the primary importance in this proceeding. And, like the CPUC, the Committee and the Commission should also consider the interstate benefits. Staff addressed the economic benefits to California ratepayers above. Accordingly, Staff respectfully requests the following finding of fact: The evidence supports a finding of economic benefit to California ratepayers, but does not sufficiently demonstrate Arizona ratepayers have an economic need for PVD2.

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165 *Id.*

166 Tr. Vol. XII at p. 2478, ll. 14-17 ("....the short answer is [Staff] found [the claimed benefits] to be highly speculative."); see also *Id.* at 2479, ll. 7-11 ("....it is difficult *to the point of being impossible* to really come up with a number that is meaningful.").

167 See fn. 147, *supra.*

168 CPUC Methodology for Economic Assessment at p. 60.

169 *Id.* at 23.

170 *Id.* at 4.

C. The need for reliable supplies of power in Arizona and California.

In its Application, SCE claim sthat PVD2 "would improve the reliability of the regional transmission system, providing insurance against major outages such as the loss of a major generating facility or of a another high-voltage transmission line."[171] SCE provided an example of a reliability improvement and its potential benefits. It stated that "if an earthquake disabled lines from the Pacific Northwest into California, then a line importing power from the Southwest, such as DPV2, would provide significant benefits above what is quantified by DPV2's economic analysis."[172]

Staff does not disagree that PVD2 could enhance reliability on subregional and regional levels. However, the project as proposed does not meet Arizona's reliability standards. Therefore, Staff believes that PVD2 as proposed does not meet the requirement of reliability in A.R.S. § 40-360.07(B). In addition to Arizona's reliability standard, EPAct 2005 establishes new reliability processes that could invoke FERC backstop authority.

Section 1211 of EPAct 2005 addresses reliability standards. Section 1211(c) allows FERC to certify an Electric Reliability Organization ("ERO"). Section 1211(b) gives FERC over an ERO it certifies. Staff witness Mr. Jerry Smith testified that FERC certified the National Electric Reliability Council ("NERC") as the ERO.[173] NERC will set reliability standards used by FERC.[174] EPAct 2005 does not completely preempt States or RTOs from setting different reliability standards.

Section 1211(i) is the savings provision. It states that "[t]he ERO shall have authority to develop and enforce compliance with reliability standards *for only the bulk-power system*."[175] Section 1211(i)(3) provides "Nothing in this section shall be construed to preempt any authority of any State to take action *to ensure the safety, adequacy, and reliability of electric service within*

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[171] A-27 at p. A-9. See also *Id.* at A-11 ("The DPV2 Project would improve reliability by increasing voltage support in southern California and enhance system operational flexibility by providing CAISO operators with moreoptions in responding to transmission and generation outages.").
[172] *Id.*
[173] Tr. Vol. X 2143, l. 22, to 2145, l. 9.
[174] *Id.*
[175] EPAct 2005, Section 1211(i) (emphasis added).

that State, as long as such action is not inconsistent with any reliability standard."[176]

Staff believes that Section 1211(i) requires the ERO to set minimum standards. We further believe that Section 1211(i)(3) allows States to set higher reliability standards. CAISO testified that it has the authority to and has set a reliability standards higher than WECC and NERC. CAISO witness Mr. VanPelt testified:

> Control area has the ability to establish more stringent reliability standards than those forwarded by NERC or by WECC. It cannot operate less stringently, it can operate more stringently. That *authority was reinforced by the California legislation* that Ms. Le Vine mentioned earlier that changed the California public utility code that allowed Cal ISO to allow standards more stringent than WECC and NERC but no less stringent.[177]

Ms. Le Vine also testified that the CAISO FERC tariff provides similar authority.[178] CAISO witness Mr. Lee affirmed that the ISO has implemented a standard more stringent than WECC and NERC. He explained:

> [W]ithin Cal ISO we do have one more stringent requirement than the WECC and a NERC planning criteria, and that is overlapping outage of a largest generating unit. And typically it covers the one unit of San Onofre nuclear power plant, or Diablo Canyon nuclear power plant. We would take the largest generating unit out of service, readjust the system, redispatch the generation within the Cal ISO, and then take the additional element out such as a transmission line. So we call that as an overlapping G minus one and N minus one. The NERC/WECC planning criteria only require a single element outage such as a single line outage.[179]

Similar to the California legislation and CAISO's tariff, A.R.S. § 40-360.07(B) gives the Committee and the Commission authority to set higher reliability standards for Arizona. Exercise of the authority would not be inconsistent with Section 1211 of EPAct 2005. Staff urges the Committee and the Commission to continue to require higher standards to protect Arizona ratepayers. 180

In this proceeding, Staff witness Mr. Jerry Smith testified that Arizona has "raised the bar in terms of our expectations beyond what has traditionally been viewed as needed to meet the

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[176] EPAct 2005, Section 1211(i)(3) (emphasis added).

[177] Tr. Vol. XIII 2603, ll. 1-9.

[178] *Id* 2603, ll. 10-22.

[179] *Id.* 2560, l. 17, to 2561, l. 4.

180 Tr. XI 2238: 13-19.

minimum WECC reliability criteria."[181] Mr. Smith specifically testified that "[T]his Commission is not supportive of the use of special protection schemes for new installations. And the reason for that is from a reliability standpoint, when you are having [sic] to use these types of features, it is saying you are pushing the system to its limits."[182] Mr. Smith did not claim that SPS are never useful. He explained that SPS "provide some real value so that you can do things on a short-term basis, not something that requires an ongoing reliance on those on a first level basis."[183]

Staff's proposed conditions are necessary to ensure Arizona ratepayers receive reliability benefits from PVD2. These benefits must be sufficient to offset the economics and resource adequacy prongs of Arizona's need test.

IV. The record supports Staff's proposed conditions that are still disputed.

Staff finishes its Closing Brief by address two important issues. First, Staff requests the Committee and the Commission to find that its conditions (1) do not make PVD2 economically infeasible; and (2) do not significantly reduce PVD2's ability to reduce congestion in interstate commerce. Staff requests these findings because the Applicant did not provide alternatives that recognize Arizona's reliability standards. Moreover, the Applicant did not provide any economic analysis or flow studies that require different findings.

Second, Staff believes one of the more significant issues in this proceeding is the potential for CAISO to expand its control area into the footprint of WestConnect. Staff witness Mr. Jerry Smith testified that Staff is "simply trying to preserve the integrity of opportunity for the WestConnect RTO once it forms to assure that there are no exacerbating Seams issues that occur as a result of this new transmission line that [is proposed to] be under the Cal-ISO control and tariff."[184]

If PVD2 is under CAISO control in Arizona, Arizona regulators, WestConnect and Arizona utilities would not be able to develop their own FERC tariff for operating the portion of

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181 Tr. Vol. X 2152: 12-19.
182 *Id.*
183 *Id.*, 2240, l. 23 to 2241, l. 2.
184 *Id.* at 2175: 13-18.

the line in Arizona. Representatives of CAISO testified that CAISO's control area is determined by the Western Electric Coordinating Council ("WECC").[185] Generally, to be in the CAISO control area transmission facilities must be owned by transmission operators ("TOs") as defined by CAISO's tariff, and be electrically connected to the CAISO controlled grid.186 Without Staff condition 6(b), Arizona would concede to expansion of CAISO's authority in Arizona.

Generators that choose to interconnect to a CAISO controlled line, must sign contracts with the CAISO. SCE's RFO also includes this requirement. The generators would have to make their capacity available to the CAISO during system emergencies. This requirement supersedes contractual obligations. 187 Staff believes that individual States have the authority to choose the RTO it invites into its jurisdiction.

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[185] Tr. Vol. XIII 2601, l.19, to 2602, l. 17 (testimony of Ms. LeVine and Mr. VanPelt).

186 *Id.*

187 See e.g. S-12, See Section 7.4.2.3 System Emergencies of CAISO's FERC tariff.

STAFF'S PROPOSED FINDINGS OF FACT

Staff appreciates the difficulty of the decision for the Committee and the Commission in this proceeding. As described above, Staff believes that the siting process is in a dramatic paradigm shift. Staff hopes we facilitated the decision-making process by helping to develop a sufficient and adequate record. Staff also believes that its position is based on a careful consideration of the facts in the record. Staff hereby respectfully requests the Committee and the Commission to make the following findings of fact.

1. Because of the uncertainty and likely negative affects on Arizona ratepayers, Staff opposes the Application as filed. However, Staff proposed 7 conditions to the CEC that make the project acceptable. Even though the proposed conditions are adopted, Staff does not endorse or recommend the project for approval. Staff simply does not oppose the project.
2. The evidence is insufficient to demonstrate that PVD2 is needed for resource adequacy in California. PVD2 is not needed to meet the resource adequacy of Arizona ratepayers.
3. The evidence supports a finding of economic benefit to California ratepayers, but does not sufficiently demonstrate Arizona ratepayers have an economic need for PVD2.
4. Staff's conditions are necessary to ensure that Arizona ratepayers receive reliability benefits sufficient to satisfy the broad public interest as required in A.R.S. § 40-360.07(B).
5. Staff's conditions do not make PVD2 economically infeasible.
6. Staff's conditions do not reduce the benefits of PVD2 to relieve congestion in interstate commerce.

STAFF'S PROPOSED CONDITIONS TO THE CEC

As discussed above, Staff believes that conditions to the CEC are necessary to ensure Arizona ratepayers receive reliability benefits from PVD2. The reliability benefits are necessary to offset potential net economic costs and reduced resource adequacy. Staff acknowledges that there is great uncertainty about the magnitude of the potential costs to Arizona ratepayers. However, Staff believes that the direction of the costs have been demonstrated by evidence in the record. Staff respectfully proposes the following conditions.

1. Southern California Edison agrees to make good faith efforts for the term of the Certificate, not to exceed ten years, to work within California and FERC proceedings to encourage regional access to natural gas storage facilities in California in a manner that addresses natural gas service reliability and efficiency in the region, including Arizona.

2. To ensure the second Palo Verde to Devers 500 kV transmission line does not adversely affect reliability of the Arizona Extra High Voltage (EHV) grid and power plants interconnected at the Palo Verde Hub, one of the following options must be adopted by Southern California Edison for construction of the new line:

   a. The line must be constructed on separate towers or monopoles for its entire length and have sufficient physical separation from the existing Palo Verde to Devers line to assure a common mode outage frequency of less than one in thirty years (per NERC/WECC Planning Standards S-2) or that no cascading outages would occur for such a common mode outage (per NERC Category C.5) without the use of a special protection scheme,

   OR

   b. The WECC rated Path 49 shall not be operated above a level at which a, NERC Category C.5, common mode outage of the two Palo Verde to Devers lines would cause cascading outages unless a special protection scheme were activated. Studies are to be performed annually to establish with WECC such a Path 49 Operational Transfer Capability (OTC) limit for the common mode outage of the two Palo Verde transmission lines. If the Applicant does not want to perform annual studies, the Applicant may choose to request a lower rating of the line from the appropriate regulatory authority. The lower rating must achieve the above goals.

3. The second Palo Verde to Devers 500 kV line shall terminate at the new Harquahala Junction Switchyard along with the existing Harquahala to Hassayampa 500 kV line in order to mitigate prevailing reliability risks associated with extreme contingencies in the vicinity of the Palo Verde trading hub.

4. To assure that prevailing Palo Verde Hub commercial practices are not compromised by the transmission interconnections at Harquahala Junction Switchyard, Southern California Edison must prior to commencing operation:

    a. File with the Federal Energy Regulatory Commission and receive approval of a request, on behalf of all Palo Verde Hub interconnecting parties, for modification of the transmission tariff free zone at the Palo Verde Hub to include all transmission lines currently interconnecting power plants to either the Palo Verde Switchyard or the Hassayampa Switchyard,

    OR

    b. File with the Arizona Corporation Commission (ACC) an executed transmission agreement with Harquahala Power Plant and the participants of the Palo Verde to TS5 transmission line that establishes that Harquahala Power Plant can schedule its full capacity over the Harquahala Junction Switchyard to Hassayampa Switchyard transmission line without transmission tariff costs and that all three parties will assume pro-rata obligations to share in the cost of an additional transmission line between these two switchyards as needed at some future date.

5. Southern California Edison shall not object or seek to change the control area authority and associated operational reliability obligations placed by the ACC upon power plants originally interconnected at the Palo Verde Hub, including but not limited to, the power plants that seek new interconnection with the Harquahala Junction Switchyard. Southern California Edison shall not object to such power plant obligations being transferred to the transmission control area to which they are interconnected in the event that they desire to discontinue as a generator only control area operator.

6. To assure that non-discriminatory open-access transmission principles are not compromised, commercial barriers to Arizona transmission users do not occur on lines serving as tie lines between CAISO and the forming WestConnect RTO operational footprint, and that no new seams issues between the two RTOs result from the construction of the Palo Verde to Devers 2 transmission line:

    a. Southern California Edison shall support an Arizona utility having operational control of the Harquahala Junction Switchyard, the Harquahala Junction Switchyard to Hassayampa Switchyard transmission line and the Harquahala Junction Switchyard termination of the second Palo Verde to Devers transmission line and the Harquahala Power Plant line. Southern California Edison shall not have operational control of the above facilities.

    b. The Applicant executes a binding written agreement with the CAISO to limit its control area. The CAISO operational control and transmission tariff application shall initially end at the Devers termination of the Palo Verde to Devers 2 transmission line and may extend eastward to any future switchyard interconnecting with the line between Devers and the Colorado River. This implies a new Southern California

Edison transmission tariff will be required should a future switchyard interconnect occur with the Palo Verde to Devers 2 line between Harquahala Junction and the Colorado River. The Applicant must file the executed agreement with the Commission prior to commencing operations of the line.

7. Southern California Edison may seek approval to change the WECC rating of PVD2 or Path 49 after receiving a CEC. SCE agrees that such a change is substantial under Arizona law, and agrees to seek an amendment pursuant to A.R.S. § 40-252 prior to beginning construction of any facilities necessary to allow and accomplish the operation of PVD2 at the increased rating.

RESPECTFULLY SUBMITTED this ~~29th~~ 30th day of November, 2006.

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ATTACHMENT A

WEST CONNECT

Enhancing wholesale electricity markets in the southwest

Virtual Control Area

The goal of the Virtual Control Area Work Group (VCAWG) is to investigate methods and technology available for coordinating control area operations to allow participating Control Areas to function as a Virtual Control Area.

In addition the VCAWG will assess the costs associated with implementing any coordinated operations as well as potential cost savings, particularly in the areas of regulation and provision of other ancillary services.

The group will develop recommendations along with supporting data for presentation to the steering committee.

Work Group Chairman

- Jerry Smith, APS

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ATTACHMENT B

WEST CONNECT

Enhancing wholesale electricity markets in the southwest

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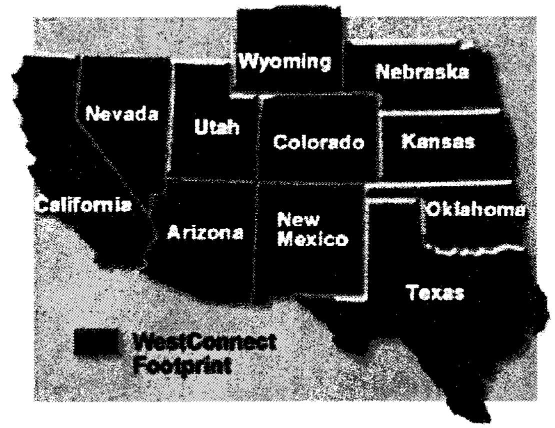
WestConnect is composed of utility companies providing transmission of electricity in the southwestern United States.



The members work collaboratively to assess stakeholder and market needs and to develop cost-effective enhancements to the western wholesale electricty market.

WestConnect is committed to coordinating its work with other regional industry efforts to achieve as much consistency as possible in the Western Interconnection.

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ATTACHMENT C

WEST CONNECT

Enhancing wholesale electricity markets in the southwest

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Regional Planning

The goal of the Regional Planning Work Group (RPWG) is to promote effective transmission planning within the subregion comprised of the WestConnect footprint.

The actual planning activities are currently carried out by the SouthWest Area Transmission Planning Group (SWAT) and the Colorado Coordinated Planning Group (CCPG).

The Regional Planning Work Group is working to have consistent principles and timelines for the two planning organizations be adopted, and ultimately to formalize a relationship with each with commitments to assist in providing resources to aid in the timely completion of the two groups planning activities.

Work Group Chairman

- Gary Harper, SRP

More on Westconnect Regional Planning

- SWAT (Westconnect web site)
- Colorado Coordinated Planning Group (CCPG) (external web site)
- Southwest Area Transmission Planning Group (SWAT) (external web site)

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ATTACHMENT D

Keith Layton

From: Keith Layton
Sent: Wednesday, November 22, 2006 3:41 PM
To: 'jkalish@ca.blm.gov'
Cc: Chris Kempley; Dawn Wilson; Ernest Johnson; Elijah Abinah; Steven Olea
Subject: Amendment to PDV1 ROW Grant

Mr. Kalish,

Thank you for talking with us recently about Staff's concerns regarding the BLM's ROW grant for the PVD1 project. As we discussed there was a condition in the original grant that required either (1) double circuit towers, or (2) single circuit towers which would be replaced with double circuit towers if a second circuit was ever constructed. The condition applied to Copper Bottom Pass and the pass between Big Horn Mountain and Burnt Mountain.

We provided transcripts from our pending hearing on PVD2. Southern California Edison (SCE or the Company) proposed a second single circuit system in the latter pass. The Company also testified that BLM did not require an amendment to the PVD1 ROW grant to remove the condition for that pass. You informed us that the ROW grant does need an amendment. You also stated that you would require the amendment as part of the Record of Decision that is pending for an amendment for the PVD2 ROW.

It is important that the Siting Committee and the Commission have the above facts correctly reflected in the record for PVD2. Would you provide a letter that Staff could docket in our case that restates the above? Your cooperation would be greatly appreciated.

Finally, as we discussed, there is a separate matter pending before the Commission to amend SCE's permit for PVD1. In an Open Meeting on October 17, 2006, Commissioner Mundell specifically asked that discovery include identifying whether SCE or BLM initiated the 1980 amendment to the PVD1 ROW grant. If BLM has any records that address Commissioner Mundell's concern, Staff would appreciate a copy of such records.

Thank you for your cooperation. Staff looks forward to your response.

Keith

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ATTACHMENT E

Western Governors' Association
Policy Resolution 05-30
November 8, 2005
Phoenix, Arizona

National Interest Transmission Corridors and Energy Corridors in the West

A. BACKGROUND

1. The Energy Policy Act of 2005 (EPAct, Section 1221) directs the Secretary of Energy to conduct a study of transmission congestion within one year of enactment and every three years thereafter. After such study, the Secretary of Energy may designate national interest transmission corridors. If a developer of a proposed transmission line in a national interest corridor does not receive approval of the line from the State within one year, the Federal Energy Regulatory Commission (FERC) may preempt the State and allow the project developer to condemn land, other than Federal and State land, for the project. FERC cannot exercise this preemption authority in States that have entered into an interstate compact, unless the States in such compact disagree.

2. Section 368 of the EPAct also requires the Secretaries of Energy, Interior, Agriculture, Commerce, and Defense, in consultation with FERC, States, Tribes and local government and other interested parties, to designate energy corridors on Federal lands for electric transmission and oil, gas and hydrogen pipelines. The agencies are to complete this task in the 11 contiguous Western States within two years and for all other states within four years.

3. EPAct establishes a requirement that Federal agencies enter into a Memorandum of Understanding within one year to ensure timely permitting of electric transmission facilities. EPAct also allows States to join such MOU.

4. Twelve Western Governors and four Federal agencies (Energy, Interior, Agriculture and the Council on Environmental Quality) have already signed the WGA Transmission Permitting Protocol. An agreement on interstate transmission permitting has been also been adopted by Midwestern Governors' Association.

5. The designation of national interest electric transmission corridors, the potential preemption of States in the siting of electric transmission in such corridors, and the designation of energy corridors on Federal lands will have a major impact on energy supplies to fuel the Western economy and dramatic impacts on land uses in affected areas.

6. EPAct provides little guidance or constraint on the execution of these responsibilities by Federal agencies. For example, EPAct provides no guidance

on how transmission congestion is to be determined by DOE. The criteria for DOE to use in identifying national interest transmission corridors are so vague as to allow DOE to designate any minor system upgrade as a national interest corridor. Alternatively, based on the generation location assumptions DOE uses to model future transmission congestion, DOE could identify future congestion on any paths in the Western Interconnection and thus potentially designate the entire region as a national interest transmission corridor.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors believe that the new authorities granted to Federal agencies to evaluate transmission congestion and designate energy corridors across Federal lands can potentially help the West meet its energy needs. However, the provisions for preemption of state transmission siting laws and designation of corridors on Federal lands also hold the potential for unproductive Federal interference in state and local land use decisions and undercutting State energy policies.

2. Federal agencies should only exercise these new responsibilities in collaboration with States and regional stakeholders.

3. Western Governors request:

   a. The Department of Energy (DOE) conduct its analysis of transmission congestion in close collaboration with States and regional stakeholders and use as the basis for its analysis, studies of historical and prospective congestion conducted by the proactive, transparent, stakeholder-driven regional transmission planning processes in the West.
   b. DOE work closely with the Western Governors, the Western Interstate Energy Board, and the Western Interconnection Regional Advisory Board in the designation of any national interest transmission corridors and energy corridors across Federal land corridors in the West.
   c. DOE provide assistance to States in the evaluation of interstate transmission siting compacts under Section 1221 and in the implementation of other requirements under Sections 1221 and 368 of EPAct.
   d. That the establishment of corridors and land use decision not impede existing energy corridors.
   e. DOE not rule out other potential corridors and include in its evaluation potential technological enhancements
   f. Federal agencies build on the existing WGA Transmission Permitting Protocol and Midwestern Governors Transmission Permitting and Siting Protocol rather than create a new MOU under Section 1221.

C. MANAGEMENT DIRECTIVE

1. WGA staff is directed to communicate this resolution to the appropriate Federal agencies.

2. WGA staff and the Western Interstate Energy Board are directed to collaborate with Federal agencies, Western industry organizations, and Tribes to maximize the benefits of the processes established by EPAct for evaluating transmission congestion, designating national interest transmission corridors and designating energy corridors on Federal lands.

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For Immediate Release
June 9, 2006

http://corridoreis.anl.gov

Contacts:
BLM – Heather Feeney, (202) 452-5125
Scott Powers, (406) 896-5319
DOE – Tom Welch, (202) 586-4316
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Federal Agencies Release Preliminary Map of Potential Energy Corridors on Federal Lands in the West

The four Federal agencies preparing to designate energy corridors on Federal lands in 11 Western States for electricity transmission and oil, natural gas and hydrogen pipelines today released a map showing preliminary corridors. The informational map was developed using comments received during a public scoping period in the Fall of 2005, and offers an update on progress in the identification of potential corridors and an opportunity for public comment on work to-date.

The Department of Energy (DOE), the Department of Interior's Bureau of Land Management (BLM), the USDA Forest Service (USFS) and the Department of Defense (DOD) are preparing a draft Programmatic Environmental Impact Statement (PEIS) to identify the impacts of designating energy corridors on Federal lands in the 11 States, as directed by Congress in Section 368 of the Energy Policy Act of 2005.

Comments and suggestions about the preliminary corridors described in the map are welcome and should be submitted to the following address no later than July 10, 2006: Julia Souder, U.S. Department of Energy 8h-033, 1000 Independence Avenue, S.W.; Washington, D.C. 20585. The opportunity to comment on the preliminary map is in addition to the opportunity for public comment on the draft PEIS, which the agencies expect to release later this year.

Energy corridors represent areas where pipelines and transmission lines may be built in the future. Designating corridors helps minimize the time it takes to site and approve projects, as well as reducing environmental effects and conflicts with other uses of Federal lands. Individual projects proposed for these corridors will be analyzed further under the National Environmental Policy Act (NEPA) for their environmental impacts.

An electronic version of the map, as well as additional information about corridor designation and the PEIS, is available on the project website: http://corridoreis.anl.gov. The website also provides a way to submit comments electronically.